

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1417 ^B

United States Circuit Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-1417

UNITED STATES OF AMERICA,
Appellee

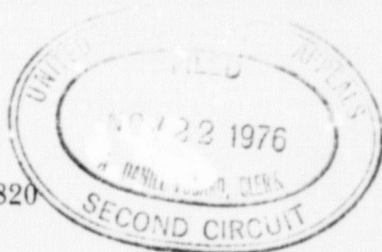
vs.

DANIEL VALERIANO,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S APPENDIX

ANTHONY J. LASALA
Reilly, Peck, Raffile and Lasala
33 Whitney Avenue, P.O. Box 1820
New Haven, Connecticut 06508



PAGINATION AS IN ORIGINAL COPY

APPELLANT'S APPENDIX

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CRIMINAL DOCKET
UNITED STATES DISTRICT COURT
JUDGE ZAMPANO

THE UNITED STATES

vs.

DANIEL VALERIANO
CHARLES FURMAN cop 7/12/76
sent, 7/12/76 CATHERINE BROWN cop 5/10/76
a/k/a Catherine Jones

CLIFTON ADAMS cop 7/1st /76
ELLSWORTH BELL cop 7/12/76
FRANK KINSLER cop 7/12/76
FRANK AMENDOLA

a/k/a "Alfie"

KINSLER: Thomas D. Clifford (apptd)
799 Main Street
Hartford, Conn.

BROWN: Thompson, Weir & Barclay
205 Church Street
New Haven, Conn.

BELL: Gerald P. Dwyer
246 Church Street
New Haven, Connecticut

BROWN: Andrew B. Bowman (appt 7/12/76)
770 Chapel Street
New Haven, Conn.

For U.S.:

Stewart H. Jones, U.S. Atty.
Paul E. Coffey, Spec. Atty.
450 Main Street
Hartford, Conn.
Peter Casey

For Defendant:

VALERIANO: Anthony J. Lasala, Eqs.
33 Whitney Avenue
New Haven, Conn.

ADAMS: Withdrawn
Robert H. Boynton (appt)
121 Whitney Ave.
New Haven, Conn.

AMENDOLA: Roger J. Frechette
215 Church Street
New Haven, Conn.

FURMAN: Gitlitz, Ronai & Berchem
81 Broad Street
Milford, Conn.

ADAMS: W. Paul Flynn (Appt.)
132 Temple Street
New Haven, Conn.

PROCEEDINGS

1974

5/3—The Grand Jury at Hartford returned a True Bill of Indictment charging violation of Title 18, U.S.C. 1955 and 2 and 371—two counts—conducting illegal gambling business in concert with each other, to wit, a bookmaking business involving numbers or policy operation, in violation of laws of State of Connecticut, and conspiring to commit offense against the United States. Bench Warrants to issue for each defendant, with bonds to be set by U.S. Magistrate. Indictment to be sealed until all warrants are served but not to exceed 30 days. Clarie, J. m-5/6/74.

5/3—Bench Warrant issued in duplicate for each defendant and together with certified copy of the Indictment handed to U.S. Marshal in Hartford for service.

5/16—Magistrate's papers, filed: Record of proceedings; Warrants of Arrest, with Marshal's returns thereon (defendants Valeriano, Furman, Brown, Adams, Kinsler, Amendola). Defendants released on personal recognizance.

5/22—Motion to Unseal, filed by the government.

6/10—VALERIANO: PLEA: Plea of *not guilty* entered to Counts 1 and 2. Three weeks for filing motions after unsealing of tapes. Zampano, J. m-6/10/74.

6/21—Following endorsement on Government's Motion to Unseal all papers currently under seal, and that all stenographic notes currently under seal be transcribed and filed with the Clerk of the Court: Motion granted. Zampano, J. m-6/21/74. Copies mailed to counsel.

6/24—Court Reporter's notes impounded at in camera hearings were sent to Mr. Sperber, Mr. Winkler, Mrs. Palanza, Mrs. Beecher and Mr. Gale for transcription, together with copy of Order re Motion to Unseal.

7/1—Notice of Readiness for trial, filed by the Government.

7/1—BROWN & FURMAN: Court Reporter's Notes of proceedings held on June 28, 1974 (Pleas), filed. Russell, R.

8/9—Discovery and Inspection: Identification of Speakers, filed by the Government.

9/5—VALERIANO: Motion to Suppress, filed by defendant.

9/5—VALERIANO: Motion to Dismiss, filed by defendant.

9/5—VALERIANO: Motion for Bill of Particulars, filed by defendant.

9/17—ADAMS, BROWN, FURMAN, BELL, AMENDOLA & VALERIANO: Court Reporter's Sound Recording of proceedings held on 6/10/74 (Pleas), filed. Russell, E. See Commissioner's papers (T-1524), for Grand Jury proceedings re Valeriano, et al.

10/11—VALERIANO: Defendant's Brief, filed.

11/5—Response of the Government to Defendant's Motions to Suppress, filed.

11/5—Response of Government to Defendants' Motion to Dismiss Count Two of the Indictment, filed.

11/5—Response of Government to Defendants' Motion to Inspect Grand Jury Minutes, filed.

11/5—Response of Government to Defendants' Motion for a Bill of Particulars, filed.

11/12—VALERIANO: Supplemental Brief Re: Motion to Suppress, filed by defendant.

11/18—Hearing held on defendant's motions to suppress. Decision reserved. Oral arguments on balance of motions on RCZ's misc. calendar to be held November 22, 1974, at 2:00 P.M. Zampano, R. m-11-18-74

11/22—Continued hearing on Pending Motions to Dismiss from Nov. 18, 1974. Decision reserved. All discovery has been completed. Zampano, J. m-11-25-74.

1976

Memorandum of Decision, filed and entered: All motions to dismiss are denied, All Motions to Suppress are denied, The Motions for disclosure of Grand Jury Minutes are denied, All Motions for Discovery and Inspection are denied. The motions for bills of Particulars are denied, with the exceptions noted hereinbefore. Zampano, J. m-2/18/76 copies mailed to counsel of record.

3/9—Supplemental Response of the United States to Defendants' Motion for a Bill of Particulars, filed by govt.

3/15—VALERIANO: Application for authorization to use the contents of intercepted wire communications re: violation of 26 U.S.C. 7201 by Daniel Valeriano, in any proceeding held under the authority of the U.S. or of any state or

political subdivision thereof provided by Section 2517(3), 12 U.S.C., filed by govt.

3/15—VALERIANO: Order, filed and entered. it is ordered pursuant to the provisions of 18 USC §2517(5), that any person who has received by any means authorized by Chapter 119 of Title 18, U.S.C., any information concerning wire and oral communications, or evidence derived therefrom, intercepted over telephone nbrs. 203-624-8802 and 203-865-5288, pursuant to orders of Judge Murphy, U.S.D.C., Dist. of Conn., dated Jan. 15, 1973, but relating to offenses other than those specified in the said order, may disclose the contents of said communications and any evidence derived from such communications, while giving testimony under oath or affirmation in any proceeding held under the authority of the U.S.A. or of any state or political subdivision thereof., Service of this order shall be served upon Daniel Valeriano within five days hereof. Zampano, J. m-3/15/76. two certified copies handed to U.S. Marshal for service. copies mailed to all counsel of record.

3/17—Marshal's return showing service, filed: Order re: Valeriano.

7/21—45(c), 46, 46(a) thru 46(i), 47, 47(a) thru 47(m) and 48, 48(a) thru 48 (q) marked for ID. One govt. witness sworn and testified. Govt. Exs. 38, and 49 thru 54 a thru c, filed. 4:25 P.M. Jury excused until 10:30 A.M. of 7/22/76. 4:45 P.M. Court adjourned until 7/22/76. at 10:00 A.M. Zampano, J. m-7/22/76.

7/22—AMENDOLA & VALERIANO: Jury TRIAL CONTINUES: 10:47 A.M. 10:49 A.M. 13 Jurors present. One Govt. witness sworn and testified. Govt. Ex. 55, filed. Govt. witness Connolly previously sworn resumes stand.

Govt. Exs. 27 thru 37 made full exs. In the absence of the jury Court hears Motion to Dismiss and Motion to Suppress—motions denied for reasons stated in open Court. Govt. Exs. 39-41 made full exs. Copies of transcript distributed to jurors. Ex. 37 is played to the jurors. 3:32 P.M. Jury excused until 10:30 A.M. of 7/23/76. 3:33 P.M. Court adjourned. Zampano, J. m-7/23/76.

7/23—AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 10:38 A.M. Motion to Reconsider Deft's Motion Treated as Motion to Strike Testimony and Suppress Evidence, filed by deft. Amendola. Court hears argument of the Motion. Motion to Reconsider is granted but the remaining motion are denied. 10:51 A.M. 13 jurors present. Govt. witness Connolly returns to the stand and narrates the tapes. Govt. Exs. 36, 39, 33, and 34 played for the jury. Motion to Strike Ex. 33 heard at side bar denied w/o prejudice. Deft. Ex. A marked for ID. 3:35 P.M. Jury excused until Tues 9:30 A.M. 3:35 P.M. Court adjourned. Zampano, J. m-7/26/76.

7/27—AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Pen Register Brief, filed by deft. Amendola. Motion to Suppress Evidence & Dismiss Case Against Amendola, filed. Motion denied for reasons stated in open court. 13 jurors present. Govt. witness Connolly resumes stand. 4:30 Court adjourned to 7/28/76 at 10:30 A.M. Zampano, J. m-7/28/76.

7/28—AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: Deft. Amendola's Request to Charge, filed. 13 jurors present. Witness Connolly resumes stand. 3 Govt. witnesses sworn and testified. Deft. Ex. B & C, marked for Id. Govt. Ex. 56, filed. Govt. Ex. 57 thru 63, marked for Id.

Deft. Valeriano's Response to Govt. Request, filed. Court hears counsel on Requests to Charge. 4:40 Court adjourned to 7/29/76 at 10:30 A.M. Zampano, J. m-7/29/76.

7/29—AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: At request of Juror #3, Mr. Kent, chambers conference held. Court hears counsel on requests to charge. 13 jurors present. Govt. witness Cross resumes stand. Govt. Ex. #57 thru 63 made full exhibits. By agreement of counsel, Juror Mr. Kent will be excused on Tuesday (8/3/76) if 12 other jurors are present. 3:55 P.M. Court adjourned to 7/30/76 at 10:30 A.M. Zampano, J. m-7/30/76.

7/30—AMENDOLA & VALERIANO: JURY TRIAL CONTINUES: 11:30 A.M. Govt. rests in absence of jury. Defendants move for judgment of acquittal—denied. Deft. Amendola's motion to strike testimony of Agent Connolly—denied. 13 jurors present. 12:03 P.M. Govt. rests in presence of jury. One witness for deft. Valeriano sworn and testified. 12:22 P.M. Both defendants rest. Defendants' renewed motions—denied. 12:30 P.M. Court adjourned to 8/3/76 at 9:30 A.M. Zampano, J. m-7/30/76.

8/3—Jury Trial Continues 9:45 to 9:59 A.M. Govt. opens. 9:59 A.M. to 10:22 A.M. Deft. Valeriano closes. 10:22 to 10:48 A.M. Deft. Amendola closes. 10:48 to 10:56 A.M. Govt. rebuttal. 11:37 to 12:35 P.M. Court charges the jury. 12:35 P.M. Jury retires to jury room. Deft. Amendola takes exception to the charge, no further charge to be given.

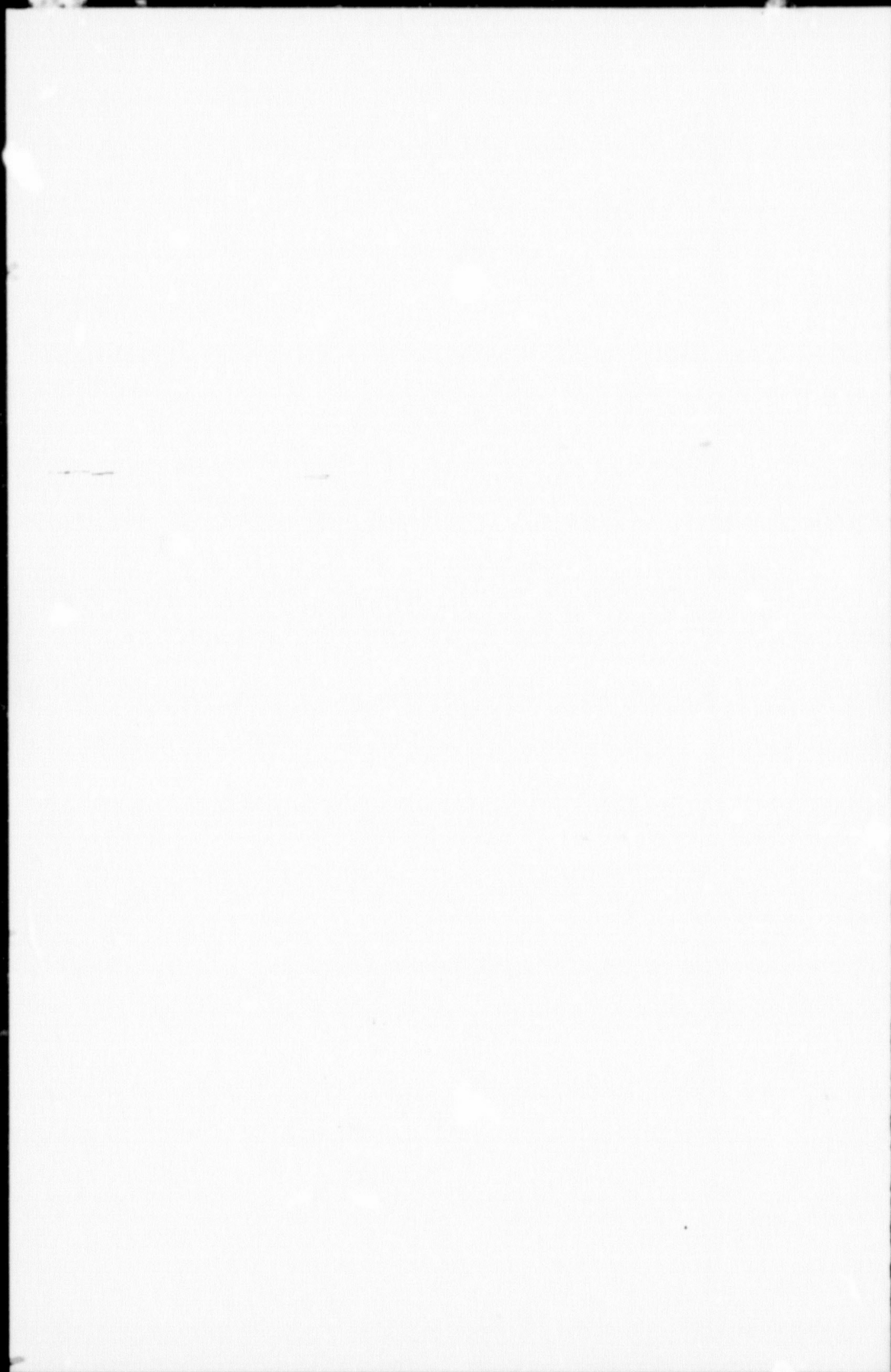
8/3—cont'd. 12:49 P.M. By agreement of counsel all full exs. and Indictment delivered to jury by Marshal and deliberation begin. 2:10 P.M. Note from jury requestion tape

recorders. 2:23 P.M. Jury returns to jury room with tape recorders brought to the mby Marshal. Court Exs. one and two marked for ID. 4:35 P.M. Note from jury re: hung jury on one deft. Both deft's move to discharge jury, denied. 4:38 P.M. Jury returns verdict as to deft. VALERIANO: Guilty as charged. 4:43 P.M. Jury returns to jury room to continue deliberation as to Amendola. 5:50 P.M. Jury excused until 9:30 A.M. of 8/4/76. 5:52 P.M. Court adjourned. Zampano, J. m-8/4/76.

9/13—DISPOSITION: VALERIANO: Impr. two years on Ct. one. Imposition of sentence is suspended on Ct. two and the deft. is placed on probation for four years. Said sentence to run consecutively to the sentence imposed on Count One. Court advises deft. of his appeal right. Deft. release¹ on his own recognizance pending appeal. If no appeal is taken deft. is to surrender himself to the U.S. Marshal in New Haven, within 10 days Zampano, J. m-9/14/76.

9/15—VALERIANO: Judgment and Commitment, filed and entered. Zampano, J. m-9/15/76. Two cert. copies handed to U.S. Marshal for service.

9/16—VALERIANO: Notices of Appeal, filed by deft. Certified copy of Notice of Appeal and docket entries mailed to U.S.C.A. on 9/17/76.



**United States District Court
District of Connecticut**

IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

APPLICATION

PAUL E. COFFEY, Special Attorney, United States Department of Justice, being duly sworn, states:

This sworn application is submitted in support of an order authorizing the interception of wire communications. This application has been submitted only after lengthy discussion concerning the necessity for such an application with various officials of the Organized Crime and Racketeering Section, United States Department of Justice, Washington, D.C., together with Agents of the Federal Bureau of Investigation.

1. He is an "investigative or law enforcement officer—of the United States" within the meaning of Section 2510 (7) of Title 18, United States Code, that—he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, The Honorable RICHARD G. KLEINDIENST, has authorized this application for an order authorizing the interception of wire communications.

Attached to this application as Exhibit "A" are the letter of notification of approval from the Assistant Attorney General of the Criminal Division, The Honorable HENRY E. PETERSEN, and the memorandum of authorization approved by the Attorney General of the United States, The Honorable RICHARD G. KLEINDIENST.

This application seeks authorization to intercept wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is—offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut Public Act 865 (1971), which has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross revenue of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit the above enumerated offense in violation of Title 18, United States Code, Section 371, which have been committed and are being committed by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown. Section 803 of Title VIII, entitled Syndicated Gambling, of the "Organized Crime Control Act of 1970", Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, by adding a new section, Section 1955, Prohibition of Illegal Gambling Business. Section 801 of Title VIII of this act contains special findings that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

3. He has discussed all the circumstances of the above offenses with Special Agent Raymond A. Connolly of the New Haven, Connecticut, Office of the Federal Bureau of Investigation, who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Connolly attached to this application) as Exhibit the facts therein in order to show that:

(a) there is probable cause to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have committed and are committing offenses involving the conducting, financing, managing, supervising, directing or owning all or part of an illegal gambling business by five or more persons in violation of Connecticut Public Act 865 (1971) which has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit such above-enumerated offenses in violation of Title 18, United States Code, Section 371.

(b) there is probable cause to believe that particular wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire communications will concern the receipt and transmission of policy bets and the settling up of said

bets by the above-named individuals, and others as yet unknown.

(c) normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) there is probable cause to believe that telephone number 203-624-8802 subscribed to by Daniel Valeriano, 58 Dixwell Avenue, New Haven, Connecticut, and telephone number 203-865-5288 subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, have been and are being and will be used in the commission of the offenses set out in paragraph 3(a) above.

4. No previous application has been made to any Judge for authorization to intercept or for approval of interception of wire communications involving any of the same persons, facilities, or places specified herein, except as indicated in the attached affidavit of Special Agent Connolly (Exhibit "B").

Wherefore, your affiant believes that probable cause exists to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, are engaged in the commission of offenses involving the conducting of an illegal gambling business in violation of Title 18, United States Code, Section 1955, and the use of an illegal gambling business in violation of Title 18, and are conspiring to commit the above-enumerated offense in violation of Section 371, of Title 18, United States Code, that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie", and others as yet unknown, have used

and are using the telephone subscribed to by Daniel Valeriano located at 58 Dixwell Avenue, New Haven, Connecticut, bearing telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, bearing telephone number 203-865-5288 in connection with the commission of the above-described offenses; that communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be intercepted to and from the above-described telephones and that normal investigative procedures appear unlikely to succeed if tried.

On the basis of the allegations contained in this application and on the basis of the affidavit of Special Agent Connolly, which is attached hereto and made a part thereof, affiant requests this court to issue an order, pursuant to the power conferred on it by Section 2518 of Title 18, United States Code, authorizing the Federal Bureau of Investigation of the United States Department of Justice to intercept wire communications to and from the above-described telephones until communications are intercepted which reveal the manner in which Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, participate in the conducting of an illegal gambling business in violation of Title 18, United States Code, Section 1955 and 371, and which reveal the identity of their confederates, their places and manner of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that order, whichever is earlier.

It is further requested that this court issue an order pursuant to the power conferred on it by Section 2518 (4)

(c) of Title 18, United States Code, directing that the Southern New England Telephone Company, the communication common carrier as defined in Section 2510 (10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted the furnishing of such facilities or technical assistance by the Southern New England Telephone Company can be compensated for by the applicant at the prevailing rates.

PAUL E. COFFEY
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before me
this 15th day of January 1973.

Judge
United States District Court
Eastern District of Pennsylvania

**United States District Court
District of Connecticut**

APPLICATION OF THE UNITED STATES OF :
AMERICA IN THE MATTER OF AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS :

ORDER

**AUTHORIZING INTERCEPTION OF
WIRE COMMUNICATIONS**

TO: Special Agents of the Federal Bureau of Investiga-
tion, United States Department of Justice

Application under oath having been made before me by Paul E. Coffey, Special Attorney, United States Department of Justice, and an "investigative or law enforcement officer," as defined in Section 2510 (7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, have committed and are committing offenses involving the conducting, financing managing, supervising, directing or owning all or part of an illegal gambling business by five or more

persons in violation of Connecticut General Statute 865 (1971) which have been or remain in substantially continuous operation for a period in excess of 30 days or has a gross revenue of \$2,000 in any single day, thereby in violation of Section 1955 of Title 18, United States Code, and a conspiracy to commit the above enumerated offense in violation of Title 18, United States Code, Section 371,

(b) there is probable case to believe that particular wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular, these wire communications will concern the receipt and transmission of policy betting and settling up of bets by Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown.

(c) normal investigative procedures reasonably appear to be unlikely to succeed if tried.

(d) there is probable cause to believe that the telephone subscribed to by Daniel Valeriano, located at 58 Dixwell Avenue, New Haven, Connecticut, carrying telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, and carrying telephone number 203-865-5288 have been

and are being used by Daniel Valeriano, also known as "Hawk"; Charles Furman, Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, in connection with the commission of the above-described offense.

Wherefore, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized, pursuant to application authorized by the Attorney General of the United States Department of Justice, the Honorable RICHARD G. KLEINDIENST, under the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

(1) intercept wire communications of Daniel Valeriano, also known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, concerning the above-described offenses to and from the telephone subscribed to by Daniel Valeriano, located at 58 Dixwell Avenue, New Haven, Connecticut, bearing the telephone number 203-624-8802, and the telephone subscribed to by Catherine Jones, 30 Park Lane, Apartment 404, Hamden, Connecticut, bearing the telephone number 203-865-5288,

(2) such interception shall not automatically terminate when the type of communication described above in paragraph "b" has first been obtained, but shall continue until communications are intercepted which reveal the manner in which Daniel Valeriano, also

known as "Hawk"; Charles Furman; Frank Gunn; Catherine Brown, also known as Catherine Jones; an individual known only as "Alfie"; and others as yet unknown, participate in the conducting of an illegal gambling business, in violation of Title 18, United States Code, Sections 1955 and 371, and which reveal the identities of their confederates, their places and manner of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

Providing that, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of fifteen (15) days from the date of this Order.

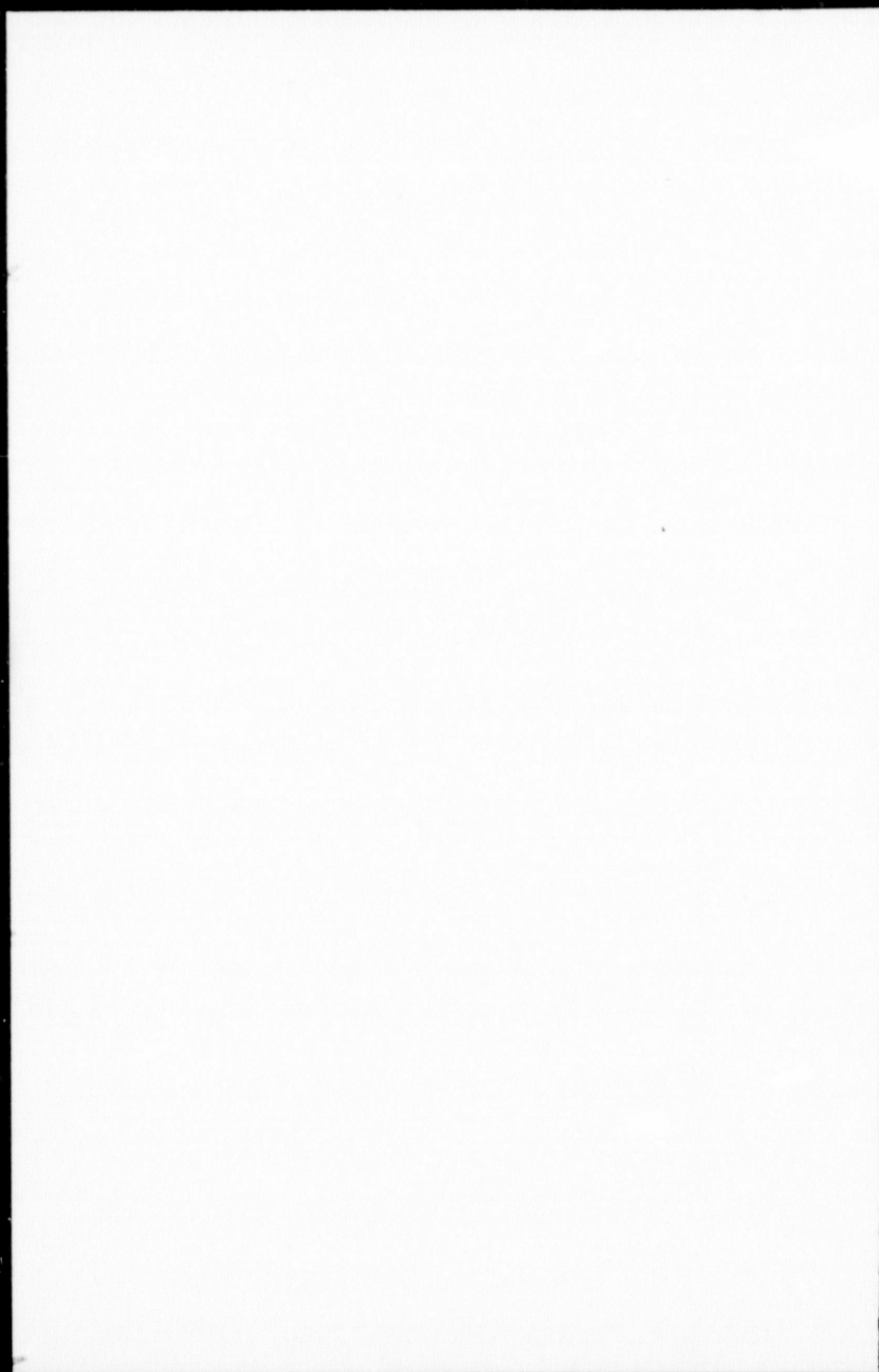
Providing also that, PAUL E. COFFEY shall provide the court with a written report on or about the fifth and tenth days following the date of this Order or as often as the court may require showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

It is further ordered upon request of applicant that the Southern New England Telephone Company, a communication common carrier as defined in Section 2510 (10) of Title 18, United States Code, shall furnish the applicant forthwith all *information, facilities, and technical assistance necessary to accomplish* the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or techni-

cal assistance by Southern New England Telephone Company to be compensated for by the applicant at the prevailing rates.

THOMAS F. MURPHY
JUDGE

DATE: Jan. 15, 1973



**United States District Court
District of Connecticut**

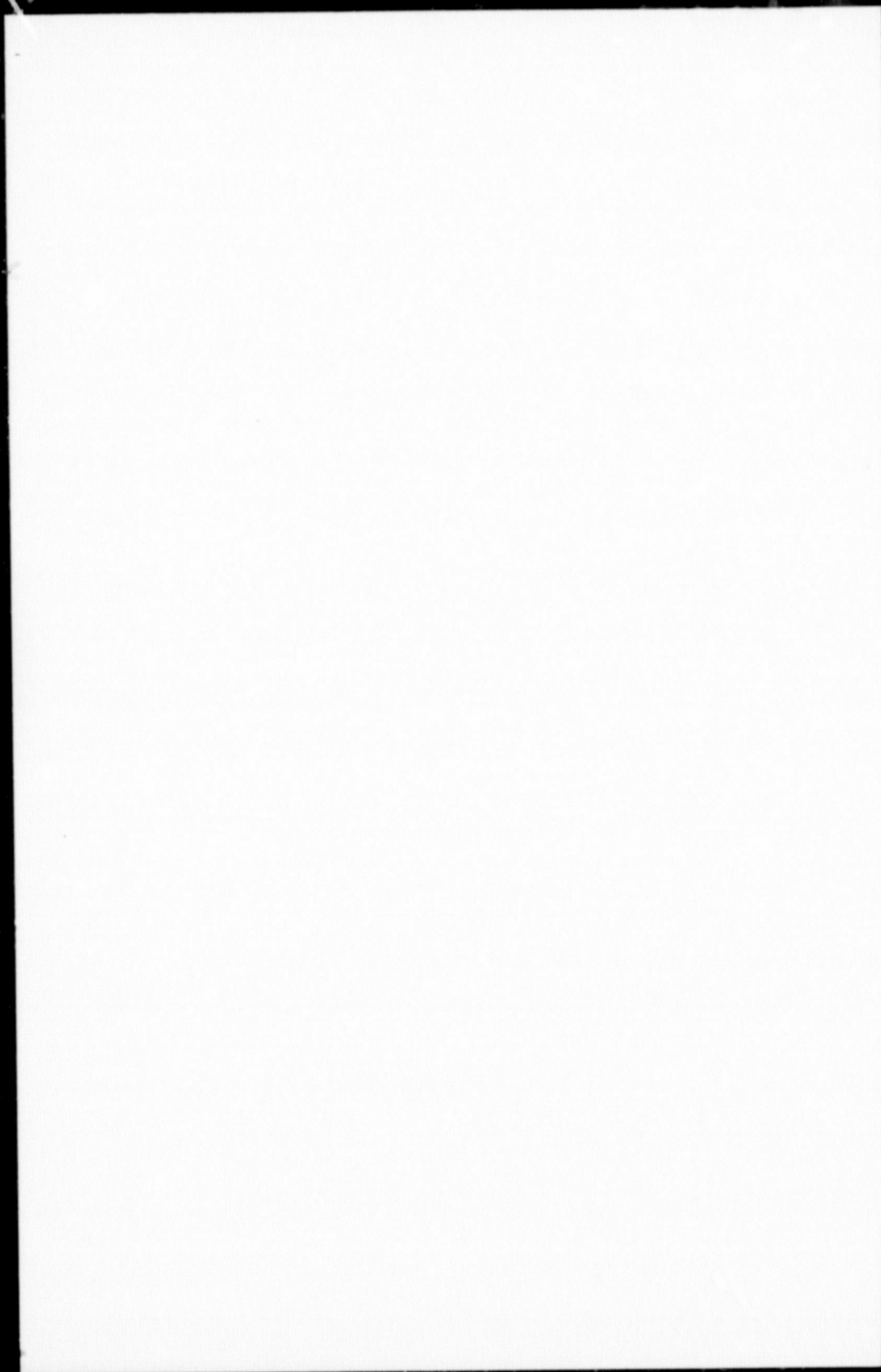
APPLICATION OF THE UNITED STATES :
OF AMERICA FOR AN ORDER AUTHORIZING :
THE USE OF A PEN REGISTER :

**APPLICATION FOR AN ORDER
AUTHORIZING USE OF A PEN REGISTER**

Now comes the United States of America by and through its undersigned attorney to apply for an order authorizing the use of a pen register on telephone numbered 203-248-2088 subscribed to by Mrs. Marie Amendola and located at the premises 719 Still Hill Road, Hamden, Connecticut and telephone numbered 203-469-0904 subscribed to by Michael J. Celentano, 3 Roosevelt Street, New Haven.

Attached as Exhibit A is the affidavit of Raymond A. Connolly, Special Agent of the Federal Bureau of Investigation which sets forth probable cause to believe that an offense in violation of Section 1955, Title 18, United States Code has been and is now being committed over the above-described telephones.

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice



**United States District Court
District of Connecticut**

IN RE: APPLICATION OF THE UNITED :
STATES OF AMERICA FOR AN ORDER :
AUTHORIZING THE USE OF A PEN :
REGISTER :

ORDER

AUTHORIZING USE OF A PEN REGISTER

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Affidavit having been made before me by Raymond A. Connolly, Special Agent of the Federal Bureau of Investigation, United States Department of Justice, and full consideration having been given to the matters set forth therein the Court finds:

(a) there is probable cause to believe that an individual known only as "Alfie", Daniel Valeriano, Michael J. Celenano, and others as yet unknown have committed, are committing, and will continue to commit offenses involving the operation of an illegal gambling business involving five or more persons and in substantially continuous operation for thirty (30) days and having a gross daily revenue in any one day of \$2,000.00 in violation of Connecticut General Statute, and thus in violation of Section 1955, Title 18, U.S.C. and are conspiring to commit such offenses in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause for belief that telephones numbered 203-248-2088, subscribed to by Mrs. Marie

Amendola, at the premises 719 Still Hill Road, Hamden, Connecticut and telephone numbered 203-469-0904 subscribed to by Michael J. Celentano, 3 Roosevelt Street, New Haven, have been used, are being used, and will be used in carrying out the offenses detailed in (a) above.

WHEREFORE, it is hereby ordered that Special Agents of the Federal Bureau of Investigation, United States Department of Justice, are authorized to:

(a) install mechanical devices on the telephone subscribed to in the name of Mrs. Marie Amendola, at the premises 719 Still Hill Road, Hamden, Connecticut, and carrying telephone number 203-248-2088 and telephone numbered 203-469-0904 subscribed to by Michael J. Celentano, 3 Roosevelt Street, New Haven.

(b) only such mechanical devices as will reveal the telephone numbers of all outgoing calls dialed from the above-described telephone, which will enable Special Agents of the Federal Bureau of Investigation to determine the location and identities of confederates, accomplices, and associates of Daniel Valeriano, "Alfie" and Michael J. Celentano in the illegal schemes aforesaid.

(c) such mechanical devices shall continue in operation for a period of fifteen (15) days from the date of this Order.

PROVIDED THAT, this authorization to install and operate the above-described mechanical device must terminate at the end of fifteen (15) days from the date of this Order.

THOMAS F. MURPHY
JUDGE

May 22, 1973

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY

District of Connecticut

450 Main Street

Hartford, Connecticut 06103

July 10, 1973

REGISTERED MAIL

RETURN RECEIPT REQUESTED

To: Daniel Valeriano
58 Dixwell Avenue
New Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

Re: Application of the United States of America in the
Matter of an Order Authorizing the Interception of
Wire Communications

Inventory

Please be advised that on January 15, 1973 the Honorable Thomas F. Murphy, United States District Judge for the District of Connecticut, signed an Order authorizing the interception of wire communications, which Order authorized said interceptions for a fifteen-day period.

During the period between January 17, 1973 and January 27, 1973 certain wire communications made by you over telephone numbers 203-865-5288 and 203-624-8802 were intercepted by agents of the United States of America, acting pursuant to said Court Order. The violations specified in the above Order were Title 18, United States Code, Sections 1955 and 371.

Very truly yours,

PAUL E. COFFEY

Special Attorney in Charge
Organized Crime Field Office
Hartford, Connecticut

**United States District Court
District of Connecticut**

IN RE APPLICATION OF THE :
UNITED STATES OF AMERICA :
IN THE MATTER OF AN ORDER :
AUTHORIZING THE INTERCEPTION :
OF WIRE COMMUNICATIONS :

ORDER

IT is hereby ORDERED, ADJUDGED and DECREED that on or before July 16, 1973 Paul E. Coffey, Special Attorney, United States Department of Justice, shall cause the service of inventory required by Title 18, United States Code, Section 2518(8)(d), to be made upon

Daniel Valeriano
58 Dixwell Avenue
New Haven, Conn.

Charles Furman
30 Park Lane
Apt. 404
Hamden, Conn.

Catherine Jones
30 Park Lane
Apt. 404
Hamden, Conn.

Frank Gunn
47 Dix Street
West Haven, Conn.

Michael J. Celentano
3 Roosevelt Street
New Haven, Conn.

by depositing copies of said inventory, postage prepaid, in the United States Mail, Registered Mail, Return Receipt Requested, and directed to each of the aforesaid persons at his or her current address.

It is further ORDERED, ADJUDGED and DECREED that Paul E. Coffey shall file the original of said inventory with the Court on July 16, 1973 and that he shall file on or about August 16, 1973 all of the Return Receipt Requests relating to each recipient of notice.

M. JOSEPH BLUMENFELD
United States District Judge

Dated at Hartford, Connecticut
this 10th day of July, 1973.

United States District Court
District of Connecticut

UNITED STATES	:
OF AMERICA	:
v.	: CRIMINAL NO. N-74-48
DANIEL VALERIANO,	:
CATHERINE BROWN,	:
a/k/a Catherine Jones,	:
CLIFTON ADAMS,	:
ELLSWORTH BELL,	:
FRANK KINSLER,	:
FRANK AMENDOLA,	:
a/k/a "Alfie"	:

MEMORANDUM OF DECISION

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proper for the government to seek the assistance of Judge Clarie in order to file a timely return under 2518(8)(a). Cf. *United States v. Poeta*, 455 F.2d 117, 122 (2 Cir.), cert. denied, 406 U.S. 948 (1972). In any event, even assuming a procedural error, suppression would be inappropriate. The integrity of the tapes is not questioned and the defendants have failed to demonstrate any prejudice from the purported violation of the statute. Cf. *United States v. Chavez*, 416 U.S. 562, 574-575 (1974); *United States v. Falcone*, supra; *United States v. Ianelli*, 477 F.2d 999, 1002 (3 Cir. 1973); *United States v. Poeta*, supra; *United States v. LaGorga*, 336 F. Supp. 190, 194 (W.D.Pa. 1971).

D. The defendants further contend they were not served with timely inventories in violation of 18 U.S.C. § 2518 (8)(d). That statute requires that, within a reasonable time but not later than 90 days after the termination of the period of the wiretap order "or extensions thereof", the judge who issued the warrant shall cause an inventory notice to be served on each person named in the order and, in the discretion of the judge, on any other person whose conversation was intercepted.

Here the original wiretap order, naming defendants Valeriano, Brown and Furman, was issued by Judge Murphy on January 15, 1973, with a termination date on or before January 30, 1973. Thus, these defendants argue, the inventories should have been served on or before April 30, 1973. However, on April 25, 1973, in Judge Murphy's absence

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Judge Newman authorized an extension of the

original order and the service of the inventories until May 25, 1973. Three days prior to the termination date, Judge Murphy granted a further extension of the order and set July 16, 1973 as the final date for the service of the inventories. The government served the notice inventories on these defendants on July 10, 1973.

Despite defendants' contentions, it seems clear that the government complied with the provisions of § 2518(8)(d). The statute specifically allows postponement of the service of notice as a result of extensions of the original wiretap order. Since the defendants received the notice inventories prior to the deadline date of July 16, 1973, the government was in full compliance with Judge Murphy's May 22, 1973 order. Cf. *United States v. Curreri*, 363 F. Supp. 430, 435-436 (D.Md. 1973). See also *United States v. Valeriano*, Magistrate's Docket No. 2 (D. Conn. November 30, 1973) (Newman, J.).

E. Defendants Kinsler, Bell, Amendola, and Adams, who were unnamed in the application and order but whose conversations were overhead during the interceptions, also argue non-compliance with § 2518(8)(d). The government concedes that these defendants did not receive full disclosure of all relevant documents and materials until July 3, 1974, two months after the indictment in this case was returned by a grand jury. However, it excuses the delay in service on the ground that these defendants were "unknown . . .

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Connolly—direct

Q. As part of your responsibilities, are you responsible for the day to day operation of what has been termed here

the monitoring plant?

A. That correct.

Q. How many agents, if you know, actually were engaged in the monitoring of these telephones?
203-865-5288 and 203-624-8802.

A. I am not certain of the exact number. I would estimate five or six.

Q. Over what period of time did these interceptions continue, or were there interceptions?

A. Yes, sir, there were interceptions.

Q. Over what period of time were there interceptions?

A. January 17 to January 27, 1973.

Q. Now, did you supervise the agents who were actually doing the monitoring?

A. Yes, sir.

MR. LASALA: I will object to this. I tried to be patient. Every one of these questions has been a leading question.

MR. CASEY: Your Honor, I think when you're trying to lay out some of the foundation, I think I should be allowed a leeway.

THE COURT: Read the last question back.

(Question read.)

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THE COURT: Objection is overruled.

Q. Did you engage in monitoring conversations yourself?

A. Yes, sir.

Q. The equipment — you were here through Agent

Hendricks' testimony, is that correct?

A. That's correct.

Q. The equipment that Agent Hendricks set up, was all the equipment located in one area?

A. Yes, sir.

Q. Was it one room?

A. Yes, sir.

Q. As a reel of tape exhausted itself during the course of the interception, what would be done with it?

A. This tape was taken into my custody and control, and I would then give it to Agent Hendricks, in most cases, to have a duplicate made as soon as possible.

Q. When were the duplicates usually made, if you know?

A. Usually, within a day of the time it was completed.

Q. What happened, if you know, to the original tapes?

A. The original tapes were brought before U.S. District Court Judge and they were sealed.

Q. Directing your attention to what is a sealed box which has been marked for identification as Government Exhibit 38,

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do you recognize that box?

A. Yes, sir, I recognize this box.

Q. What is it?

A. This is the box with the sealed tapes contained therein.

Q. Was this box sealed in the presence of a federal

judge?

A. Yes, it was.

Q. And after that box was sealed, where did it go?

A. It was turned over to the FBI for control.

Q. Was it kept in a secure area?

A. Yes, it was.

MR. FRECHETTE: May we have the time, please?

MR. CASEY: Yes, I'm sorry, I should have gotten to that.

Q. Do you recall the date that these tapes, that that box was sealed?

A. I believe it was sealed on July 29, 1973.

Q. To your knowledge, has that box been opened since that time?

A. No, sir.

Q. Is it in its original condition?

A. Yes, sir.

Q. From the time that it was sealed before the District Court Judge?

A. Yes, sir.

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Q. And were you in frequent attendance?

A. Yes, I was.

Q. Did you observe what the agents who were actually monitoring were doing?

A. That is correct.

Q. Did you monitor yourself?

A. Yes, I did.

Q. And you're familiar with the routine that was used at that time?

A. Yes, I am.

Q. Were there contemporaneous records which were kept by the monitoring agents as the communication would be intercepted?

A. That is correct.

Q. In a general sense, what do those records pertain to?

A. Those records would indicate the date, the time that the intercept was commenced, the time it was concluded. It would show the time the call was received, the initials of the agent that received it or monitored it, and whether it was an incoming or outgoing call, and in several cases it would indicate the telephone number if it was an outgoing call.

Q. Where would the information come from that the agent would note as to the number being dialed, if it was an outgoing call?

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A. That would come from the dialed number recorder.

Q. Showing you what has been marked for identification as Government Exhibit 39, I will ask you if you recognize that and if you can tell us what it is.

A. Yes, I can.

Q. What is it?

A. This is a log pertaining to N.H.D.C. and records

the time, the date of the intercepts.

Q. This is the log — the log is what I have just been referring to as the contemporaneous records?

A. That is correct.

Q. And which tele — is there a particular telephone that this log pertains to?

A. Yes, sir.

Q. Which telephone is it?

A. This is N.H. number 22, and it pertains to the telephone subscribed to by Daniel Valeriano.

Q. The document that you have in front of you, is it an original?

A. No, it is not.

Q. Is it a copy?

A. Yes, it is.

Q. Is it an exact copy of the original?

A. Yes, it is.

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and I don't think that condition precedent was met, and I would rely on the Federal Rules of Civil Procedure, because I think it's a discretionary matter within the province of the Court on the basis of what the Court considers to be proper authentication, so my objection to the transcripts would be based on that.

I have an objection, also — not an objection to the logs, but I might very well have one, but before that, I would like to make some inquiry of Special Agent Connolly.

THE COURT: Yes.

VOIR DIRE

BY MR. LASALA:

Q. I heard you make reference to those logs, Agent Connolly, while they were being identified in terms of both the intercept and the pen register — which I guess is properly called a dial register, is that correct?

A. Yes, sir.

Q. Now, you talked about — Mr. Casey at least asked you about agents who were monitoring the telephones, is that correct?

A. That is correct.

Q. Insofar as a pen register or dial register device is concerned, how is that apparatus mechanized, in other words, is that a jump attachment as Mr. Hendricks explained yesterday?

A. I am not qualified to answer that question.

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Q. You're not qualified to answer that question?

A. No, sir.

Q. What's your knowledge of a pen register, how — does it attach to what Mr. Hendricks called the boot of the line?

A. I have no information concerning that at all, Mr. Lasala.

Q. You have no information concerning that at all?

A. No, sir.

Q. Well, actually, the pen register, the dial register,

only records numbers, outgoing numbers, is that correct?

A. The dial number recorder, yes, sir, that's my understanding.

Q. So there would be nothing actually to record in terms of a conversation, it's only recording the outgoing numbers, is that correct?

A. The dial number recorder, that's my understanding, yes, sir.

Q. Now, the dial number recording or the pen register application, which had your affidavit underlying it, occurred in May of 1973, is that correct?

A. That is correct.

Q. As a matter of fact, Judge Murphy signed that order on May 22, 1973, did he not?

A. I would guess that is correct.

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Q. Do you know for how long a period of time that order was to run?

A. I don't recall, but I speculate it probably would be less than 15 days.

Q. It was between May 24 and June 1st, is that correct?

A. Yes, sir.

Q. Now, that is the only period of time where you were permitted by law to register the outgoing telephone numbers — when I say register, I mean record the numbers themselves — from two telephones, is that correct?

A. That is correct.

Q. That would have been the telephone 248-2088 and telephone 469-0904?

A. That is correct.

Q. That was not an order which permitted another wire interception, was it?

A. That is correct.

Q. Now, during the order for the wire interception, which went from January 17, I believe, to January 27, was there a pen register or a dial register along with that interception?

A. That is correct.

Q. There was?

A. Yes, sir.

Q. Is that recited in Judge Murphy's order?

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A. I don't recall.

Q. I am showing you an affidavit, Mr. Connolly, and will you tell me if this is your signature at the end of the affidavit?

A. Yes, that is my signature.

Q. Referring you to page 2 of that affidavit, and again to page 3 of that affidavit, is there anything on page 2 under wire interception in the order of January 27 which gave you the power to make use of a dial register device?

A. Yes, sir.

Q. Will you read that to me on your affidavit regarding that?

MR. CASEY: Your Honor, I object. The affidavit wouldn't give Agent Connolly the right to do anything.

THE COURT: That's a matter of argument.

Is there anything in your affidavit about a dial register or pen register? That's question number one.

THE WITNESS: I don't see anything here.

THE COURT: Is there anything in Judge Murphy's order about a dial register or pen register?

THE WITNESS: I don't believe so.

THE COURT: What's on page 2 and 3 that you're about to read? What document is that?

MR. LASALA: This is the affidavit underlying a

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search warrant.

THE COURT: Who prepared that?

MR. LASALA: Agent Connolly.

THE COURT: Your question is: is there anything in there about a pen register or a dial register?

MR. LASALA: Running from January 17 to January 27.

THE COURT: What's your answer?

THE WITNESS: I don't believe so.

Q. Was there, in fact, a dial register or pen register activated from January 17 to January 27, 19—

A. Yes, there was.

Q. Is that included in Judge Murphy's order?

A. No, sir.

Q. Yet, it was activated?

A. Yes, sir.

MR. LASALA: Your Honor, I think the matter speaks for itself. There were two orders: one order signed by Judge Murphy on the 15th to run from January 17, 1973 to January 27, 1973 —

THE COURT: Since Judge Murphy was the issuing judge, why don't you go over that carefully with me. I wasn't the issuing judge, so I have to familiarize myself with all this again. Judge Murphy on what date signed this?

MR. LASALA: If your Honor would prefer, maybe we could

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have a recess, and I will hunt up Judge Murphy's original order—

MR. CASEY: I have it here.

THE COURT: Mr. Casey, does this come as a surprise to you, or are you prepared to meet it without a recess?

MR. CASEY: I think I am prepared to meet it. The argument does certainly come as a surprise, and it comes rather later, but —

THE COURT: I am trying to figure out what we are arguing about.

MR. LASALA: What I am arguing about, if your Honor please, were two orders: one an interception order which was signed by Judge Murphy, and which ran from January 17, 1973 to January 27, 1973. Several months later —

THE COURT: That's a wiretap?

MR. LASALA: That's an interception, wiretap.

Several months later, Agent Connolly and the government made application for a pen register, and this is the way he refers to it in his affidavit, which is a dial register according to Mr. Hendricks.

Judge Thomas Murphy signed that on May 22, 1973 authorizing installation of a pen register device on telephone number 248-2088 and telephone number 469-0904, and that was to run — that particular order concerning the pen register and the dial register was to run from May 24, 1973 to June 1st, 1973.

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My submission at this time, your Honor, is that there was no authorization for a pen register device on any telephones from the period of January 17, 1973 to January 27, 1973.

THE COURT: Is it your claim there was a pen register on —

MR. LASALA: According to what Mr. Connolly just told us, there was.

THE COURT: Did you ask him on which phones?

BY MR. LASALA:

Q. On what phones was the pen register device —

MR. LASALA: He testified to it earlier.

MR. FRECHETTE: Hendricks did, too.

THE COURT: What phones?

THE WITNESS: Both phones, your Honor.

THE COURT: What motions do I have and what's this got to do with the transcripts or the logs?

MR. LASALA: If your Honor please, it came out during — frankly, this morning, it ran through my mind a little bit, but then while listening to the testimony it appeared to me that Agent Connolly was testifying concerning a pen register device that was operational from the 17th to the 27th, and that is what assured me in my mind this is what they were talking about.

THE COURT: I will accept all that. What motions are you making or what arguments, or what exhibits are you addressing

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these arguments to? In other words, I ask for arguments on the logs and the transcripts. Are we away from those items and going on to another or different motion?

MR. LASALA: It goes to the entire case, your Honor, because it indicates that the evidence in this case is tainted.

THE COURT: Let me get the facts straight.

Mr. Connolly, do any of the logs that the government is trying to get into evidence — and I believe they are known as 39, 40 and 41 for Identification — refer to any information taken by a pen register or a dial recorder from January 17 to January 27?

THE WITNESS: Yes, they do.

THE COURT: Which exhibits?

THE WITNESS: I believe they all do, your Honor.

MR. CASEY: It would be Exhibits, if I may — Exhibits 39 and 40.

THE COURT: So I suppose one argument is that the defense objects to those exhibits coming in because they refer to information obtained through electronic means which was not authorized by Judge Murphy. I suppose that's one argument?

MR. LASALA: That's correct.

THE COURT: The next argument is that the whole case should be dismissed because the government used electronic means to obtain information which was not authorized by a court; is

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that argument number two?

MR. LASALA: That is correct.

THE COURT: Anything else?

MR. LASALA: No, your Honor.

THE COURT: Let me hear Mr. Frechette.

MR. FRECHETTE: I have the same thing as Mr. Lasala, except I object to 41 coming in as a fruit of the forbidden tree.

MR. CASEY: 41, for the sake of clarity, is the May pen register on the Amendola phone.

THE COURT: So why don't we say that defense counsel objects to all the logs coming in?

MR. FRECHETTE: That hits the —

THE COURT: I will assume you will make the same argument.

MR. LASALA: This is all pertinent and pursuant to 18 U.S.C. 2518 —

THE COURT: Wait a minute. What's that?

MR. LASALA: The 18 U.S.C. 2515.

THE COURT: All right. I know what you are referring to.

MR. LASALA: There was never any authorization for a pen register device or a dial register device on the telephone of Daniel Valeriano in this case.

THE COURT: First of all, are we using the right terms?

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I know what a pen register is. Is it dial recorder or dial register?

THE WITNESS: It's referred to as a pen register and dial number recorder.

THE COURT: Dial number recorder. Let's get our terms right. Now, Mr. Casey, you're faced with two arguments: one, that the defense counsel object to the admission of 39, 40 and 41 on the grounds that 39 and 40 were not authorized by Judge Murphy, or that the pen register dial number recorder was not authorized by court and, therefore, anything relating to that mechanism should be excluded; and that 41 should also go out because, although it was authorized by Judge Murphy, it was somehow tainted by Exhibits 39 and 40 being obtained by nonauthorized dial number recorder; and the second motion is a motion to dismiss the case.

MR. CASEY: Let me first address the motion to dismiss the case. I will argue to the Court that the lack of any papers relating — from Judge Murphy, relating to the pen register is of really no significance. But, first, even if the Court were to find that there was significance in that fact,

and that there was no authority for the agents to use the pen register device, my argument as to the claim of dismissal of the case would be that certainly only any evidence coming from the pen register device itself would be suppressible, and that certainly the —

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THE COURT: Do you admit that the use of the dial number recorder from January 17, '73 to January 27, '73 was not authorized by Judge Murphy?

MR. CASEY: Well, no, your Honor, I don't admit that. I admit there is no reference to a pen register device in the orders. I know that's a very fine distinction, but no, I do not admit there was no authority for the use of a pen register device.

THE COURT: Where did Judge Murphy authorize it in the order?

MR. CASEY: We ran into a similar situation of this, your Honor, very recently before Judge Blumenfeld in the case of U.S. versus Barrone, H-75-123. In that case, there had been an order for a wiretap, and there was an order for a pen register device. The government, when it went before Judge Clarie, had requested an extension for the period of time in the wiretap order to later on in the evening if certain conditions had been satisfied. The government did not move that Judge Clarie also extend the hours of the pen register device. The defendants in that case raised the claim that the pen register device had been used beyond the period authorized and that, therefore, anything beyond that period was suppressible.

Judge Blumenfeld found that so long as the agents had the authority to continue with what the government called

in its

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brief the greater intrusion, that being the actual interception of conversations, that it was all right to use the pen register device.

My argument here would be the very same—

THE COURT: Did he put that in writing, or was this orally from the bench?

MR. CASEY: No, your Honor, I have it back at my office. Because it wasn't related to this case, I didn't bring it, but there is a written opinion in that case, and I would be happy to supply it to the Court tomorrow. The government's argument here would be essentially the same, that Judge Murphy authorized the interception of wire communications over certain telephone numbers. The Federal Bureau of Investigation was perfectly justified in going forward with that investigation and wiretapping those phones, and I think under the circumstances they were also justified in using the much lesser intrusive method of also attaching a pen register device. The pen register device merely reflects the number that an outgoing telephone number is going to. It doesn't record any conversation or anything of that nature.

So my argument would be that, in fact, Judge Murphy's order authorizing the use of electronic means to intercept wire communications over those two telephones, in fact, in a technical sense, also allowed for the use of the pen register device,

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although that was not mentioned. I think that that is the inference that the government would

ask the Court to draw.

I would further argue, your Honor, that the government has never made any secret of the fact that there was a pen register device. The logs indicating the results of the pen register device have always been available to the defendants.

I think that this motion comes late, and I think it comes at an improper time, and on those bases, which I have just discussed, that would be the government's position.

THE COURT: Let me ask you this question: Has there been any evidence introduced as to what the pen register or the dial number recorder reflected into this case so far?

MR. CASEY: Not up to this point, your Honor.

THE COURT: Why is the information obtained from the dial number recorder from January 17, '73 to January 27, '73 of importance to the government in its presentation of its case?

MR. CASEY: It's important in a supplementary fashion.

THE COURT: How important?

MR. CASEY: It's not as important as the actual tapes themselves. The purpose of the government introducing the agents' logs was to get information from Agent Connolly at the time that these various tapes are made as to where certain telephone calls were going to.

Now, there will also be voice identification on those

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plays. Of course, the purpose was to provide a further circumstantial ground for finding that all of these various individuals were engaged in one business, and that's the

purpose for the pen register results.

I'm sorry, your Honor, I didn't address myself to the May Pen register. I don't see how that's the fruit of the poisonous tree. There were no wiretaps in May.

MR. LASALA: I would like to add, Special Agent Connolly's affidavit, which I showed him, under date of 16th of July, 1973, he states in the preliminary paragraphs, paragraph four, "In the course of this investigation into this gambling operation, two orders were granted by the United States District Court for the State of Connecticut: one ordering authorizing the interception of wire communications from two phones, and the second order authorizing the pen register device (dial number recorder) from two phones used in this gambling operation."

Now, the testimony on interception from the 17th to the 27th, Judge Murphy signed an interception order intercepting the telephones subscribed to by Daniel Valeriano and Catherine Jones.

The pen register order, which did not come until May, late May, ordered a pen register on the telephone subscribed to Marie Amendola and the telephone subscribed to by Michael Celentano.

It's interesting that in the body of this affidavit

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these two distinct orders are, in fact, distinguished by Special Agent Connolly, and I submit that there was never an authorization to put a dial number recorder on the telephone subscribed to by Mr. Valeriano, and I think it led to evidence which is inadmissible and tainted.

THE COURT: All right.

MR. CASEY: One further comment, if I may I think

it's clear, due to the fact that the government did go to a federal judge in May and get an order for a pen register device—I think it's clear that both the Federal Bureau of Investigation and the government attorneys felt that in using the pen register device in January, they were operating under the authority of the judge's order as given for the wire interception. That's the inference.

THE COURT: I get your point on that.
With respect to the transcripts—

MR. FRECHETTE: Mine is different.

THE COURT: Go ahead.

MR. FRECHETTE: My claim is different. One of the questions asked of Ray yesterday was that—and I thought—I leave it to your Honor who heard the answer—that but for the pen register, they would not have gotten to Amendola at all. How else could they have gotten to him?

THE COURT: Ask him.

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BY MR. FRECHETTE:

Q. Isn't that so?

A. It was of assistance. We got the pen register to know where the telephone was going to.

Q. The only place you got Amendola's number from was on the pen register, or whatever you want to call it, that was put on in January, no question about that?

A. No question about that is correct.

MR. FRECHETTE: That's it, your Honor, I think.

THE COURT: All right. So you're saying that the lead

to Mr. Amendola was illegally obtained and, therefore, the Court should grant your motion to dismiss as against him. Is that, in effect, what the argument is?

MR. FRECHETTE: Yes.

MR. CASEY: Your Honor, of course, I vehemently disagree with that. The Agent Connolly has testified, and I think it's clear from the various papers that were before your Honor when you were ruling on the motions to suppress, that there was suspicion in the FBI's mind as to who Alfie was. I think that if push came to shove and we were to hold a hearing on this, I would expect that the government could at least prove an independent basis, so again I would argue against the—whatever the Court does—the dismissal of the entire case—

THE COURT: Do you have the date of Judge Blumenfeld's

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opinion with respect to what you claim is analogous?

MR. CASEY: A couple of weeks ago, your Honor. Not last week.

THE COURT: The Barrone case?

MR. CASEY: Yes, H-75-123.

MR. LASALA: I don't have to comment to your Honor on this, because I feel it's abundantly clear, but, nevertheless, I will make my position known.

Concerning that particular case, that case differentiated from this case in that there were two existing orders at the time, an interception and a pen register, one of which was extended and one which was not.

Here we have a situation where there was only one order initially, a wire interception for two phones, to run from the 17th to the 27th. Not until five months later did the pen register order come into being, and this was after the government got all these extensions beyond the 90-day limitation period, which I pointed out in my brief, and which I thought was prejudicial. The government kept this case extending and extending until they were finally able to come up with this pen register order, but it's not a situation as it was in the Barrone case where there were two existing orders: one was extended and one was not, for a short period of time.

THE COURT: With respect to the transcripts, are you

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offering them into evidence, or are you just—do you just want to use them as a guide?

MR. CASEY: The government is offering them. I believe my research shows that it's now discretionary upon the Court whether or not they actually go into the jury room as a full exhibit or if they are simply given to the jurors to assist them actually listening to a tape.

THE COURT: Are these the cases listed on page 3—

MR. CASEY: I believe so.

THE COURT: — of your proposed instructions to the jury? Is my recollection faulty that in Chiarizio the transcripts did not go in as exhibits?

MR. FRECHETTE: That's correct.

MR. CASEY: That's correct. They had been marked—

THE COURT: You say there is other authority to have

them come in?

MR. CASEY: I believe so. If I could have a second, I could find .

THE COURT: I am going to call a recess.
(Recess taken for lunch.)

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AFTERNOON SESSION
(In the absence of the jury.)

THE COURT: Are the parties ready to proceed?

MR. CASEY: Yes, your Honor, government is ready.

THE COURT: In the absence of the jury.

MR. CASEY: The government would like to draw to the Court's attention in line with the arguments given earlier by the government the case of U.S. versus Falcone.

THE COURT: I am aware of it.

With respect to the two rulings, the Court will first rule on the motions directed to the lack of court order for the dial number recorder or pen register during the period January 17, '73 to January 27, '73.

At the outset, the Court finds no authority for a dismissal, even assuming the validity of the defendants' arguments. Actually, what the procedure would be is a motion to suppress either all the evidence taken as a result of the alleged illicit dial number recorder being placed on the phones, or I suppose it could be argued all the evidence taken during the period January 17, 1973 to January 27, 1973.

Even assuming *arguendo* that the arguments were valid there would not be sufficient grounds to dismiss the case or the indictment. The government, I suppose, could

attempt to put on a case without the evidence, if it wished, so what we really have is a motion to suppress, and I so interpret the motion presented

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prior to the luncheon hour.

The motion to suppress is denied for two basic reasons: One, it's certainly untimely. These materials were available to the defendants certainly for a period of months, and maybe even years. Motions to suppress were presented to this Court and I believe Judge Newman over a period of two years, and they were ruled upon at great length, and certainly this ground should have been presented at that time. But even assuming for the sake of argument that the motion is to be regarded as not untimely, the Court finds there is authority to support the government's position.

While the Second Circuit has not directly ruled on this point, other courts have. Recently, the Second Circuit discussed the need of a court order for pen register, not in combination with a request for a wiretap, but I find that case is not applicable here. The cases that do support the government are U.S. versus Falcone, 505 Fed. 2nd, 478 and the discussion there in 481 through 483. That case seems to be directly on point. With respect to the precise issue before this Court. It's a Third Circuit case in which cert. was denied. Also, of course, Judge Blumenfeld's opinion in U.S. versus Barrone is somewhat close. I am not as familiar with all the facts in that case as in the case before me, or in the case of U.S. versus Falcone on this issue, but it does lend weight to government's position, and in the short time I had available to me, I found

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nothing to the

contrary.

I take it, it goes without saying that it's not a good practice, that it is, of course, always more appropriate to spell out to the issuing judge that a pen register may be part of the electronic surveillance, but certainly it would seem to me a fortiori that if a judge issues authority to the monitoring agents to listen to a telephone conversation during certain periods of time, the court would automatically grant a request to obtain the telephone numbers of outgoing calls without more.

So, as the government says, it does seem to be a case where the lesser is included in the greater, and I have to agree with the caveat that the government should really spell these matters out for the issuing judge so that if nothing else, the court will avoid this type of motion.

MR. CASEY: Not that it is germane to this point, but it is now the practice of the government to get both orders for both—

THE COURT: I know. When I am the issuing judge of late, I recall distinctly the government has asked for both. This case does go back a few years, so your exceptions are noted. The point is preserved for another forum, if that should become necessary.

MR. LASALA: I would like to make one remark for the record. Your Honor has ruled on that. Certainly, there could be argument, but since your Honor has ruled, I assume argument

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would serve no purpose.

For the record, since 1973, I have been involved in this case and I have paid attention to all the discovery and virtually the piles and piles of motions and papers that have

been filed, and your Honor's reference to an untimely attack, I can state unequivocally that through all the motions and all the responses thereto, and all the disclosures, the government has taken the position that there were two separate orders: one for interception and one for pen register, and I would state it was not until the events of yesterday that I was aware that there was a pen register on my client's phone from the 17th to the 27th, so, consequently, I don't feel that it was an untimely motion on my part, because I had no knowledge before that was the case, based upon what the government put forth in its disclosure.

THE COURT: This has been practically an open file case and I cannot and will not accept that explanation. Judge Murphy's order was certainly available. The logs, the tapes and the various other materials were available to counsel, and it's up to counsel for the defendant to prepare its case—their case thoroughly and not rely on what might have been assumed.

But, in any event, your comments are noted for the record and will be available to another forum to weigh, but I, as the trial judge, just cannot accept that explanation.

MR. FRECHETTE: Would your Honor be kind enough to note the same comment by me? The first time I ever heard of this

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was yesterday morning.

THE COURT: Yes. I hasten to add that I do not—I do not wish my comments to reflect on credibility of counsel. I believe perhaps the first time you heard about it was yesterday. All I am saying is that diligent investigation and preparation would have brought these things to your at-

tention earlier over the past two years if you took advantage of the materials that were available to you during that period of time.

Now, with respect to the transcripts, I am going to allow the government to use the transcripts, with cautionary instructions to the jury, but at this point I am not going to permit the transcripts into evidence. The government may renew its request at a later time. The transcripts will be available to the jury. There has been no question about their correctness as transcriptions of what was said, but I think for the time being, since clearly the transcripts are only an aid to the jury, that the Court will only permit the transcripts to be used for that purpose and not as full exhibits. However, that's without prejudice.

Bring in the jury.

Respectfully submitted,

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